

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 08, 1999 at 9:00 A.M., in Room 108 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB20, SB22, SB33
Executive Action: None

HEARING ON SB 22

Sponsor: SEN. ARNIE MOHL, SD 39, Kalispell,

Proponents: Rick Day, Director of the Department of Corrections
Craig Reap, Montana Highway Patrol
Tom Schneider, Montana Public Employees Assoc.

Opponents: None

Opening by Sponsor:

SEN. ARNIE MOHL, SD 39, Kalispell, presented SB22. This legislation is brought on behalf of the Department of Corrections and maintains that all officers must be certified.

Proponents' Testimony:

Rick Day, Director of the Department of Corrections, presented his written testimony in support of SB22, **EXHIBIT(jus05a01)**. He provided an amendment to the bill, **EXHIBIT(jus05a02)**. The amendment includes probation and parole officers in Section 1 to be consistent with the rest of the bill. The grandfather date is changed to July 1, 1998. This has been done to alleviate concerns for personnel at Pine Hills. The amendment refers to an appropriate basic course certified by the Board of Crime Control instead of the Montana Law Enforcement Academy. The current language maintains that the attendance would need to be at the Academy. In the area of corrections and detention, classes are taken regionally. This language would make sure the ability to conduct this training offsite of the Law Enforcement Academy is not precluded.

Craig Reap, Montana Highway Patrol, rose in support of SB22. He provided an amendment, **EXHIBIT(jus05a03)**. The amendment was presented with the approval of the sponsor and the Department of Corrections. The amendment asks that a group of ten officers who work for the Montana Highway Patrol, commercial vehicle inspectors, be included under the legislation. This amendment would extend Peace Officer Standards & Training (POST) certification to the individuals who are former law enforcement officers and are currently POST certified. The individuals who are not POST certified and reach the levels of training that are required that have been approved by POST would then qualify. These officers have limited arrest powers and jurisdiction.

Tom Schneider, Montana Public Employees Assoc., rose in support of SB22 and the introduced amendments.

Opponents' Testimony: None.

{Tape : 1; Side : A; Approx. Time Counter : 9.08}

Questions from Committee Members and Responses:

SEN. BARTLETT questioned the July 1, 1998 date used in the department's amendment. Her concern was whether anyone would be

subject to discharge from employment because they have not completed the training within the six month period.

Director Day explained that the original date was used since it was the date of the new academy class. Anyone hired after that date should have attended the class. Traditionally there have been various titles for personnel who essentially functioned as corrections officers. As of July, uniformly across the Department of Corrections, the title has been changed to corrections officer. The July date will catch the personnel at the Pine Hills facility.

SEN. BARTLETT asked whether this would also apply to personnel in county jails. **Director Day** stated that it already applies to these individuals.

SEN. HALLIGAN questioned whether all persons employed prior to July 1, 1998, would meet the standards. **Director Day** suggested substituting the wording "after July 1, 1998" for "subsequent to July 1, 1998". The intent is to grandfather the persons hired prior to July 1, 1998. The amendment would apply only to the persons hired after July 1, 1998.

CHAIRMAN GROSFIELD asked **Ms. Lane** to make the necessary clarifications to the amendment.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 9.13}

SEN. MOHL remarked that since this bill will not go into effect until October, the amendment should be clarified.

HEARING ON SB 20

Sponsor: SEN. DEBBIE SHEA, SD 19, Butte

Proponents: Craig Thomas, Executive Director of the Board of
Pardons and Parole
Mary Jo Fox, Governor's Office

Opponents: None

Opening by Sponsor:

SEN. DEBBIE SHEA, SD 19, BUTTE, introduced SB20. This legislation was requested by the Board of Pardons and Parole. The Board has operated for a long time with a modest budget and a limited staff. In the 1970s the Board operated with part-time

members and limited administrative staff. The population was between 400 and 600 inmates who were housed in one facility. The Board processed 500 cases per year and interviewed approximately 300 inmates. In FY98, the Board processed over three times as many cases including a total of nearly 2,000 cases and 1,000 face-to-face parole interviews. Projections are still forecasting increased populations which will result in elevated caseloads. The Board currently prepares for cases of offenders housed at Montana State Prison, Montana Women's Prison, male and female pre-release centers in Billings, Butte, Great Falls, and Missoula and the Great Falls and Glendive Regional Detention Centers. A regional detention center will be added in Missoula and a private prison in Shelby. Housing units will be added at Montana State Prison, Montana Women's Prison and a prerelease center will also be added.

SEN. SHEA provided amendments to the bill, **EXHIBIT(jus05a04)**. The amendment to Section 2 more accurately reflects the Board's current policy and practice and will protect the Board and state from litigation. The new section affords the Board more flexibility in the decision making process. It will allow Board appointed hearing officers, provided for in §46-23-104, to participate in the decision making process which will reduce paperwork, expedite appropriate releases, reduce offender's anxiety caused by delays, and safeguard public safety.

The amendment to Section 3 simply expands the Board's rulemaking authority in all current areas of responsibility and accurately reflects current practice. Section 46-23-210 does not presently address vocation progress reviews, clemency proceedings, or video conferencing.

New Section 4 provides added flexibility and allows the Board to utilize modern technology to reduce travel time and costs. The extensive amount of time spent traveling to various facilities throughout the state and county can be better utilized investigating parole, prerelease, and clemency applicants. This will help insure public safety as a number one priority. All appropriate options must be utilized unless the state is prepared to authorize full-time professional board members.

The amendment on new Section 5 reflects a recent Montana Supreme Court decision, Warden v. Montana Board of Pardons and Parole, 1998, which held that parole board files are subject to public and inmate inspection. The Court also held that documents must be copied and given to the public or the inmate. Additionally, the Court held that §46-23-108, which includes the confidentiality of records and reports, as unconstitutional. This section will replace §46-23-108 and will reflect the Court's

position and allow the Board to recoup costs of processing requests.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 9.22}

Craig Thomas, Executive Director of the Board of Pardons and Parole, stated that the first amendment to §46-23-202 allows a decision rendered by a board member and a board designated hearing officer. The three staff members are hired by the board. The board is made up of citizens appointed by the Governor who serve a four-year term. The makeup of the board started in 1889. In 1906, the Board of Prison Commissioners was authorized. The boards had dual functions. The Board of Pardons reviewed pardons and executive clemency matters. The Board of Prison Commissioners reviewed parole matters. In 1955 the two entities combined to make up the Board of Pardons. At this time there were several hundred inmates in one facility. Due to the current complexity and diversity, they are currently unable to cover all the areas that have inmates.

There may be concerns in having a staff member involved in making a parole decision. At the present time, the board members have the authority to designate a parole board member, a parole board staff member, or an out-of-state releasing authority to conduct hearings and submit a report to the board. The staff member investigates the case, researches background material on the offender, conducts a public hearing, interviews the offender, and renders a disposition. At the end of the month the board members sign the disposition.

Section 4 allows the board to use interactive videoconferencing in administrative reviews. The amendment removes the ability to conduct parole hearings or revocation hearings over the telephone. Face-to-face contact with offenders provides minimal due process and allows for a better decision. Thousands of administrative reviews are necessary after the initial appearance. A telephone review with board members and progress reports are then appropriate.

The final section relates to the Supreme Court ruling that the board's files are subject to inspection by the public which includes inmates. The legislation outlines what the Supreme Court has indicated as an appropriate way to deal with the issue. It also allows for charging of a minimal fee for copying and handling of reviewing the files. When a request for review of a file is received it is necessary for a staff member to read every document to determine that a privacy issue is not involved and also to determine whether or not a penological interest is

involved and someone may be put in jeopardy by releasing the document.

Mary Jo Fox, Governor's Office, remarked that she is former member of the parole board. She added that as the demands increase it may be necessary to have a full-time parole board. The staff needs the flexibility and ability to make decisions. Concerns have been raised regarding giving authority to people who are not appointed. Staff members are hired by the board and are only given the right to be hearings officers. She asked that the board be given the tools they need to do the right thing. She added that this legislation could be sunsetted.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. BARTLETT remarked that there is draft legislation that would require the Department of Corrections to release persons who have been paroled all on the same day of the month. She wondered if this would affect the workload of the Board of Pardons. **Mr.**

Thomas understood that this legislation dealt with discharges and would not affect their caseload. He added that allowing parolees to be released the first of the month would not work for their process. Once an offender is paroled, they send out a placement investigation and have probation and parole officers investigate the plan. Sometimes offenders are paroled after completing treatment. There would be significant complications involved in trying to release everyone on the same day in that the staff would be required to explain the rules of parole to offenders. Facilities are located throughout the state and out-of-state offenders are housed in Tennessee, Arizona, and various other facilities throughout the country.

SEN. HALLIGAN questioned what privacy interest the state would have in not allowing records to be opened. **Mr. Thomas** clarified that there are a number of sensitive documents in the files. This could include letters and documents from victims, documents from judges and prosecuting attorneys, and information submitted by institutional staff which could place the employee in jeopardy within the institution. To properly review the case, the staff in the institutions needs to be able to be open and honest with the parole board.

SEN. HALLIGAN asked what information would be available to the inmate. **Mr. Thomas** maintained that the Supreme Court decision held that the inmate can inspect the file but that the Board had the responsibility to review the file to determine which documents had a penological interest and the inmate's right to

know did not apply. They are very reluctant to release psychological evaluations to the inmate, evaluations by staff, and documents submitted in confidence by victims. The Board needs to document the review of the file. The inmates only access to the file would be copies sent to them after either redacting information from the file material or eliminating it altogether.

SEN. DOHERTY raised a concern in allowing parole and revocation hearings via videoconference. **Ms. Fox** responded that the reality is that the board is made up of voluntary citizens. Technology can provide a good hearing. There is an advantage to having the entire board watch the hearing via videoconference as opposed to having a member of the board provide a review.

{Tape : 1; Side : B; Approx. Time Counter : 9.43}

SEN. JABS questioned who would have the final decision if an inmate challenged the contents removed from a file. **Mr. Thomas** believed that the challenge would be through the court system. The court would determine whether the documents held back were appropriate.

He added that 99% of the revocation hearings are held at the Montana State Prison. All offenders that are returned to custody appear before the board.

SEN. GRIMES inquired about the procedure involved following the staff's research and report and the board's decision. **Mr. Thomas** explained that after researching the case and conducting the interview with the offender, recommended case disposition is filed outlining the exact reasons for denial or in the case of parole, a disposition outlining the preconditions and/or conditions of parole. The board members sign the disposition.

CHAIRMAN GROSFIELD asked if the two auxiliary members were involved as often as the regular members. **Mr. Thomas** affirmed that they were.

SEN. BARTLETT understood that the auxiliary board members were alternates in the event that one of the regular board members was unable to be present at the hearing. **Mr. Thomas** affirmed and added that due to the caseload the auxiliary board members are involved in hearings every month.

Closing by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 9.50}

SEN. SHEA closed on SB20. She remarked that this legislation is to provide the board with the tools necessary to handle a very overwhelming job.

HEARING ON SB 33

Sponsor: SEN. FRED THOMAS, SD 31, Stevensville

Proponents: Rick Day, Director of the Department of Corrections

Opponents: None

Opening by Sponsor:

SEN. FRED THOMAS, SD 31, Stevensville, introduced SB33 at the request of the Department of Corrections. This legislation clarifies that a private prison may not be constructed without authorization by the Department of Corrections. It may not be operated without a license from the department. It also closes the loophole in law prohibiting inmates, other than Montana inmates, from being housed in a private prison. Section 19 addresses the fact that a private correctional facility cannot be constructed unless it is authorized by the department. The licensing is not transferable. Line 15 on page 15 refers to Title 46, chapter 19, part 3 or 4, which involves an interstate compact established throughout the country which provides that if there is a prisoner in Montana that may be in life-threatening danger, that prisoner can be transferred to another state. Another state could transfer a prisoner here for the purpose of protecting that individual's life or health. Page 3 line 13 strikes the words "the Montana" and inserts the word "a" in reference to the state prisons.

Proponents' Testimony:

{Tape : 2; Side : A; Approx. Time Counter : 10:00}

Rick Day, Director of the Department of Corrections, remarked that this legislation is a clean up bill. The two significant issues in the bill are to clear up possible interpretations that may occur when selecting a private prison provider in the state and the confusion over the licensing process. During the process of consideration for a private prison, construction can be authorized but before there is operation licensing is necessary. Also, this legislation addresses the potential loophole regarding federally convicted inmates being brought into the private prison in Montana. Director Day provided his written testimony, **EXHIBIT (jus05a05)**.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. DOHERTY asked why an operational license was transferable and a construction license was not. This language is found in Section 19, page 15, lines 9-11. **Director Day** stated that this is the confusion that they are trying to correct. There is no license to construct. There is a selection process where a contractor is selected and the department authorizes the construction. Once the facility is completed and ready for inspection, the facility and the operator are licensed for operation. This involves two separate and distinct processes and two actual contracts which include a contract to construct and a contract to operate.

SEN. DOHERTY questioned whether the court made a distinction between the two in the case filed regarding the prison facility in Shelby. **Director Day** remarked that the court did not accept the argument. They couldn't license because they didn't have an existing building and they couldn't authorize because they didn't have a license.

Scott Crichton, ACLU, stated that his understanding is that Corrections Corp. of America has several corporations to include a land corporation that purchases the land and is separate from the operational corporations. Corrections Corp. was making plans to dissolve the old corporation as of one minute after midnight on January 1st and reinstalling a new corporation and then taking a fine prorated over one minute. He added that he would provide the committee with his file on this matter.

SEN. BARTLETT asked if US Corrections Corporation bought out Corrections Corporation of America would US Corrections Corporation need a license from the department. **Director Day** responded that they would need to be licensed and approved by the department.

SEN. BARTLETT asked if a corporation was interested in building a private prison and had no intention of contracting with the department, would the department's authorization be necessary to building the prison. **Director Day** stated that it would and this is the clear intention of the process. It must be approved by the department.

ADJOURNMENT

Adjournment: 10:15 A.M.

SEN. LORENTS GROSFIELD, Chairman

JUDY KEINTZ, Secretary

LG/JK

EXHIBIT (jus05aad)